

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of the Commission's Rules)	GEN Docket No. 90-314
to Establish New Personal Communications)	ET Docket No. 92-100
Services, Narrowband PCS)	
)	
Implementation of Section 309(j) of the)	PP Docket No. 93-253
Communications Act - Competitive Bidding,)	
Narrowband PCS)	
To:	The Commission	

OPPOSITION OF WEBLINK WIRELESS, INC.

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SUMMARY

WebLink Wireless, Inc. (“WebLink”) is submitting this opposition in response to the petition for reconsideration filed by the Personal Communications Industry Association (the “PCIA Petition”) regarding the Commission’s Second Report and Order and Second Further Notice of Proposed Rule Making in the above-captioned proceeding. The PCIA Petition calls upon the Commission to jettison its well-reasoned decision to use Major Trading Area (“MTAs”) as the service areas for the Narrowband Personal Communication Service (“NPCS”) spectrum that has already been channelized but not yet auctioned by the Commission.

WebLink urges the Commission to deny the PCIA Petition on a variety of grounds. MTA-based licensing is superior to nationwide and regional licensing because it will promote viable, competitive NPCS businesses by serving the needs of a wide range of carriers. Furthermore, MTA-based licensing will not cause spectrum coordination problems or undermine spectrum efficiency. Instead, MTA licenses are sure to be in strong demand in upcoming spectrum auctions, thereby ensuring healthy levels of competition in those auctions. In addition, WebLink and other carriers have relied on the future availability of licenses based on small, manageable geographic areas, and thus granting the PCIA Petition would cause great harm to such carriers. Given these considerations, WebLink requests that, if the Commission decides to create additional regional or nationwide licenses, that it do so using a small portion of the 1 MHz of reserve NPCS spectrum, instead of revisiting its MTA licensing decision in the Report & Order.

Finally, WebLink urges the Commission not to accept any late-filed supplements to the PCIA Petition because such supplements are impermissible.

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To: The Commission

OPPOSITION OF WEBLINK WIRELESS, INC.

WebLink Wireless, Inc. ("WebLink"), by its attorneys, hereby submits this opposition to the petition for reconsideration filed by the Personal Communications Industry Association ("PCIA") on July 6, 2000 (the "PCIA Petition") in response to the Second Report and Order and Second Further Notice of Proposed Rule Making, FCC 00-159, released by the Federal Communications Commission (the "Commission") in the above-captioned proceeding on May 18, 2000 (the "Report & Order" or "Further Notice," as appropriate).

I. INTRODUCTION / BACKGROUND

WebLink is a mid-sized, independent company and a leader in the wireless data industry. Formerly known as PageMart Wireless, Inc. ("PageMart"), the company recently changed its name to reflect a strategic shift in the focus of its offerings from traditional paging services to more advanced, innovative services. The company provides wireless e-mail, wireless instant messaging, information on demand, wireless telemetry services, as well as traditional paging services, to over 2.5 million customers throughout the United States. The company's nationwide, two-way, wireless data

network, using Internet protocol and Motorola's ReFlex technology, is the largest of its kind, reaching approximately 90 percent of the U.S. population. WebLink holds nationwide and regional Narrowband Personal Communications Service ("NPCS") licenses, as well as private carrier paging licenses. The company spent over \$130 million to acquire its NPCS licenses, and was one of the first companies to complete construction of a nationwide two-way NPCS network.

In 1997, the Commission released a Narrowband PCS Report and Order and Further Notice of Proposed Rulemaking, in which it proposed, inter alia, to eliminate Basic Trading Areas ("BTAs") in favor of nationwide and regional service areas for the NPCS spectrum that had already been channelized by the Commission but not yet auctioned (the "Channelized Spectrum").¹ The Commission received comments from numerous parties including PCIA (the "1997 PCIA Comments") and WebLink (then PageMart) (the "1997 WebLink Comments").² On the issue of geographic licensing, both PCIA and WebLink urged the Commission to eliminate BTA-based licensing in favor of using Major Trading Areas ("MTAs"), and to refrain from creating additional nationwide or regional licenses.³ PCIA declared that "[t]he channels currently allocated for BTAs should be licensed based on Major Trading Areas . . . and not nationwide areas as proposed by the Commission."⁴

¹ Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, GEN Docket No. 90-314, ET Docket No. 92-100, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Narrowband PCS, PP Docket No. 93-253, Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 12972, 12989-990, ¶¶ 29-32 (1997).

² Comments of the Personal Communications Industry Association, filed June 18, 1997; Comments of PageMart, Inc., filed June 18, 1997.

³ 1997 PCIA Comments at 5-8; 1997 WebLink Comments at 2-3.

⁴ 1997 PCIA Comments at 2.

In the recent Report & Order, the Commission, inter alia, proceeded to eliminate BTA-based licensing in favor of MTA-based licensing, concluding that the record did not support the creation of additional nationwide and regional licenses.⁵ As a result, the Commission created seven paired and two unpaired MTA channels/licenses (as well as eight MTA-based response channels) within the Channelized Spectrum. In the Further Notice, the Commission requested comments on a narrow set of issues, including whether it should proceed with the licensing of the 1 MHz of reserve NPCS spectrum (the “Reserve Spectrum”), and whether it should create larger spectrum blocks in the Channelized Spectrum.

In response to the Report & Order, PCIA filed the PCIA Petition, in which it urged the Commission to abandon its decision to use MTA-based licensing for the Channelized Spectrum in favor of nationwide licensing. The PCIA Petition makes no reference to the 1997 PCIA Comments in which PCIA wholeheartedly embraced exactly the opposite position. PCIA also filed comments in response to the Further Notice (the “PCIA Comments”).⁶ Those comments include a band plan for the NPCS spectrum, and urge the Commission to use nationwide licensing for the Channelized Spectrum and the Reserve Spectrum.

WebLink participated in the PCIA-sponsored discussions leading to the adoption of the PCIA band plan, and supports the band plan insofar as it concerns the sizes of spectrum blocks and channel pairing. However, WebLink did not vote for the PCIA band plan because WebLink opposed the abandonment of licensing based on MTAs. Thus, on the issue of service areas for NPCS licensing,

⁵ Report & Order at ¶¶ 10-14.

⁶ Comments of the Personal Communications Industry Association, filed July 19, 2000.

the PCIA band plan does not represent the consensus of the paging industry. By this opposition, therefore, WebLink opposes PCIA's efforts to persuade the Commission to abandon MTA-based licensing for the NPCS spectrum in favor of nationwide licensing.

II. DISCUSSION

On the following substantive and procedural grounds, WebLink urges the Commission to deny the PCIA Petition: (1) MTA-based licensing will promote viable, competitive NPCS businesses; (2) MTA-based licensing will not cause spectrum coordination problems or undermine spectrum efficiency; (3) MTA-based licensing will ensure healthy levels of competition in spectrum auctions; (4) WebLink and hundreds of other paging companies have relied on the Commission's previous decision to license NPCS spectrum using smaller areas; (5) even if the Commission decides to create additional regional or nationwide NPCS licenses, it can do so in a small portion of the Reserve Spectrum, without reversing its decision to license the Channelized Spectrum based on MTAs; and (6) PCIA should not be permitted to supplement its petition for reconsideration using the PCIA Comments, including the PCIA band plan. WebLink discusses each of these points below.

A. MTA-Based Licensing Will Promote Viable, Competitive NPCS Businesses by Serving the Needs of Both Large and Smaller Carriers.

PCIA asserts that the Commission should reconsider its decision to use MTA-based licensing for the Channelized Spectrum because NPCS businesses require nationwide footprints in order to provide the types of services that customers demand, and thus to compete successfully against other types of Commercial Mobile Radio Service carriers.⁷ In support of this assertion, PCIA points out that, in general, the wireless industry has become more consolidated over the past several years, due to

⁷ PCIA Petition at 2-3.

various large mergers and acquisitions that were consummated, ostensibly, to establish nationwide footprints to meet consumer demand.⁸

PCIA's logic is flawed. Although consolidation may help some NPCS companies to maximize their profits, that does not mean that viable, competitive NPCS businesses cannot be based on smaller service areas. Indeed, PCIA's emphasis on large mergers and acquisitions suggests that what PCIA is really concerned about is whether a viable, competitive large business can be maintained using MTA licenses. However, what PCIA fails to mention is that Section 309(j) of the Communications Act ("Section 309(j)") does not direct the Commission to maximize the profits of large businesses; rather, it directs the Commission to create meaningful economic opportunities for smaller businesses.

Furthermore, the Report & Order recognizes that individual MTAs are large enough to support viable, competitive NPCS businesses, including by creating meaningful economic opportunities for smaller businesses.⁹ The Commission reasoned that larger carriers will be able to aggregate MTAs to form large, contiguous service areas, which in turn will allow for economies of scale.¹⁰ At the same time, MTA-based licenses are more affordable and manageable for smaller businesses, and thus will also promote viable, competitive smaller market entrants.

Indeed, PCIA itself recognized these advantages of MTA-based licensing in the 1997 PCIA Comments. In that submission, PCIA declared that "*MTAs are affordable by small*

⁸ Id.

⁹ Report & Order at ¶ 10.

¹⁰ Id.

*businesses, and can be pieced together to form nationwide or regional service areas” and “permit[] a narrowband PCS licensee to establish a large enough service area to be competitive with other suppliers of messaging services.”*¹¹ PCIA also praised MTA-based licensing on the grounds that it provides “*potential applicants a high degree of flexibility to pursue their business plans*” which in turn “*promote[s] maximum participation by a variety of operators, specifically including small businesses and new entrants.*”¹² Strikingly, unlike the 1997 PCIA Comments, the PCIA Petition does not even mention the needs of small businesses or new entrants. PCIA has done nothing to justify such an abrupt about-face change in its position, or to explain why the purported industry consensus has changed so drastically from what it was represented to be in 1997.

Because, as previously recognized by PCIA, MTA-based licensing serves the interests of both large and smaller carriers, the Commission’s finding in the Report & Order that “MTAs are the most appropriate geographic area for licensing the remaining narrowband spectrum”¹³ was well-reasoned, and should not be reconsidered or abandoned. There simply is no compelling reason for the Commission to reverse its decision to use MTA-based licensing for the Channelized Spectrum. Indeed, a shift to nationwide or regional licensing would undermine the ability of smaller carriers to participate in auctions, and thus would prevent them from obtaining new spectrum to provide innovative services. As the Commission observed, “[t]he record contains little support for, and considerable opposition to, the

¹¹ 1997 PCIA Comments at 3, 6 (emphasis added).

¹² *Id.* at 7 (emphasis added). Furthermore, PCIA stated that “it is reasonable to expect small businesses to have sufficient resources to purchase and construct MTA-sized areas” and “PCIA has repeatedly pointed out that narrowband messaging services are conducive to small business entry because of the lower costs.” *Id.*

¹³ Report & Order at ¶ 10.

establishment of additional nationwide licenses.”¹⁴

B. MTA-Based Licensing Will Not Cause Spectrum Coordination Problems or Undermine Spectrum Efficiency.

PCIA asserts that MTA-based licensing raises interference coordination problems which would impose transaction costs on carriers attempting to establish spectrum coordination agreements with carriers in neighboring MTAs or, worse yet, necessitate the use of guard bands in a manner that would result in the inefficient use of spectrum.¹⁵ PCIA’s concerns are exaggerated.

The coordination issues raised by PCIA are no worse for MTA-based licensing than they are for licensing based on larger areas. Both MTA and regional licensees have for many years been required to coordinate with licensees in adjacent areas, and there is no significant difference in the time and effort required to do so between regional and MTA service areas. Moreover, such coordination has not historically proven to be a problem, as the paging industry possesses the technical expertise and experience to ensure successful coordination of hundreds of carriers. Thus, although numerous large and small paging carriers now own paging licenses based on MTAs and smaller areas, no wide spread interference problems have ever been reported within the paging industry. PCIA fails to explain why the industry would be unable to continue that trend in the face of continued MTA-based licensing.

Similarly, PCIA's suggestion that, if the Commission maintains MTA-based licensing, more guard band spectrum would be needed, is also misplaced. Guard bands are not used to prevent interference between geographic areas, but rather to avoid interference between different channels in the

¹⁴ Id. at ¶ 11.

¹⁵ PCIA Petition at 3.

same area. Consequently, the guard band issues are essentially the same for BTA, MTA, regional and nationwide licensing. The question of the allocation of guard bands is therefore largely irrelevant to the consideration of service areas.

Strikingly, PCIA fails to explain how the spectrum coordination and efficiency considerations associated with licensing the Channelized Spectrum are any different now than they were in 1997 when PCIA expressed its wholehearted support for MTA-based licensing.¹⁶ Nor could PCIA offer such an explanation because these technical considerations have not changed. Simply put, the Commission has repeatedly made available spectrum using smaller licensing areas for numerous wireless services, including NPCS, and thus has either explicitly or implicitly concluded that the types of spectrum coordination and efficiency considerations raised by PCIA do not decisively weigh in favor of nationwide licensing.

Additionally, as the Commission recognized in the Report & Order, many carriers will choose to aggregate MTAs to form large, contiguous service areas. Consequently, the overall amount of coordination that will be required is much less than PCIA suggests. Indeed, assuming for the sake of argument that PCIA is correct that carriers generally demand nationwide and regional service areas, the extent of license aggregation would be rather significant, and thus the overall amount of coordination required would be minimized.

Contrary to PCIA's assertions, MTA-based licensing will promote spectrum efficiency by allowing carriers to obtain spectrum in markets where spectrum is needed most. Nationwide licensing, on the other hand, is a one-size-fits-all approach that would encourage carriers to use

¹⁶ The 1997 PCIA Comments fail to even mention spectrum coordination or efficiency considerations.

spectrum inefficiently, and, perhaps, engage in spectrum warehousing.

C. MTA-Based Licensing Will Ensure Healthy Levels of Competition in Spectrum Auctions.

PCIA also asserts that nationwide licensing will “maximize competition” in spectrum auctions and thus is superior to MTA-based licensing.¹⁷ However, PCIA contradicts itself by simultaneously asserting that nationwide licensing also will “reduc[e] the cost of acquiring spectrum.”¹⁸ Logically, maximizing competition in spectrum auctions would result in higher winning bids, or, in other words, an increase, rather than a reduction, in the cost of acquiring spectrum. Moreover, PCIA ignores the fact that maximizing competition in spectrum auctions is not a goal that Congress set forth in Section 309(j), nor is maximizing government revenue.

Instead, the Commission’s broad mandate to promote the public interest requires that the Commission ensure healthy levels of competition in spectrum auctions, not maximum levels of competition. The Report & Order achieves this goal, because MTA-based licensing will ensure healthy levels of competition in spectrum auctions by attracting a wide range of auction participants, including large, mid-sized and smaller businesses. Nationwide licensing, on the other hand, would reduce competition for spectrum by artificially limiting auction participation to a small cadre of large carriers that can afford nationwide licenses. Thus, the Commission should adhere to its well-reasoned decision to use MTAs for the Channelized Spectrum.

¹⁷ PCIA Petition at 3.

¹⁸ Id.

D. The Commission Should Use MTA-Based Licensing to Minimize Harm to Carriers that Have Relied on the Previous Decision to License Spectrum Using Smaller Areas.

In its opposition, PCIA admits that at least some of the Channelized Spectrum should be made available using MTAs to promote flexibility and permit licensees to obtain appropriate amounts of spectrum to suit their business needs.¹⁹ Furthermore, the 1997 PCIA Comments state that “PCIA opposes reallocating any of the [Channelized Spectrum] for nationwide licenses [because] [s]uch action would not be equitable to the existing nationwide operators who valued the spectrum, placed bids, and obtained financing based on certain understandings about the Commission’s licensing plan,” i.e., that licenses would continue to be made available based on smaller areas.²⁰ These fairness considerations have not changed since 1997; if anything, the passage of time has warranted an even greater reliance on the Commission’s policy of licensing based on smaller areas.

Indeed, hundreds of paging carriers have for years relied on the fact that licenses based on smaller areas would be available for later auctioning. WebLink, in particular, has formulated and executed its business plans based upon this reasonable expectation. In previous auctions, WebLink invested over \$130 million in nationwide and regional NPCS licenses. Based upon the reasonable expectation that licenses for smaller areas would be available in future auctions to augment its system on an as-needed basis, WebLink proceeded to market its nationwide services more aggressively in some parts of the country than in others. Moreover, the design of WebLink’s Internet protocol-based messaging service is premised upon the availability in particular areas of larger blocks of spectrum than

¹⁹ Id. at 5.

²⁰ 1997 PCIA Comments at 8.

those available in other areas. WebLink thus needs the ability to improve its system accordingly.

Similarly, numerous small paging carriers have constructed their networks and marketed their services in a manner dependent upon the future availability of a substantial number of NPCS channels based on manageable service areas. Many of these companies have an urgent need to fill-in coverage gaps, or increase their system capacity, in particular areas. Shifting all the way from BTAs and MTAs to mostly nationwide and regional licenses likely will prevent many of these carriers from executing their business plans with respect to upgrading their networks and improving their services.

Only by continuing to use MTA-based licensing for the Channelized Spectrum can the Commission ensure that companies such as WebLink will not be harmed by their reliance on the future availability of licenses for smaller service areas. Indeed, as one of the first carriers to have constructed fully a two-way nationwide NPCS network, WebLink understands more than many other paging companies the need for, and the implications of relying on, the availability of spectrum in discrete service areas to support existing networks. Based on its experience, WebLink supports fully, and requests the affirmance of, the Commission's decision to use MTAs for licensing the Channelized Spectrum.

E. The Commission Could Create Additional Regional and/or Nationwide Licenses Without Disturbing the MTA Licensing Decision in the Report & Order.

In comments filed in response to the Further Notice, WebLink voiced its support for the Commission's tentative conclusion that the time is ripe to proceed with the channelization and licensing of the Reserve Spectrum.²¹ WebLink noted that the rationales expressed by the Commission in support of its decision to use MTAs for licensing the Channelized Spectrum are equally applicable to the licensing of the Reserve Spectrum. WebLink continues to support strongly this view, and requests that

²¹ Comments of WebLink Wireless, Inc., filed July 19, 2000.

the Commission license both the Reserve Spectrum and the Channelized Spectrum based on MTAs.

Even if the Commission decides, however, to create additional regional and/or nationwide NPCS licenses, it can do so without reversing its well-reasoned decision in the Report & Order to use MTA-based licensing for the Channelized Spectrum. In evaluating the merits of the PCIA Petition, the Commission should bear in mind that a small portion of the 1 MHz of Reserve Spectrum could be allocated for nationwide or regional licensing, and thereby be used to serve the interests of those large carriers desiring only to purchase licenses based on large geographic areas. Such a move would provide much of what PCIA has requested, without disturbing the MTA licensing decision in the Report & Order.

F. The Commission Should Not Permit PCIA to Supplement the PCIA Petition Using the PCIA Comments or Band Plan.

The PCIA Petition states that “[i]n its comments, PCIA provides additional detail regarding the inappropriateness of licensing the remainder of [the] narrowband PCS spectrum on an MTA basis.”²² In sum, PCIA is attempting to supplement the PCIA Petition using the PCIA Comments (including the PCIA band plan), which is impermissible under the Commission’s rules.

Section 1.429(d) of the Commission’s rules provides that a “petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice,” unless leave to do so is requested and granted.²³ Because the time for filing petitions for reconsideration and any supplements thereto expired on July 6, 2000, and the PCIA Comments were filed on July 19, 2000 without any supporting request that the PCIA Comments be accepted as a late-filed supplement, the

²² PCIA Petition at 2, n.2.

²³ 47 C.F.R. § 1.429(d) (emphasis added).

Commission should refuse to consider the PCIA Comments and band plan when evaluating the PCIA Petition.

III. CONCLUSION

Consistent with the foregoing discussion, WebLink urges the Commission to deny the PCIA Petition because it fails to present any compelling rationale for using nationwide licensing for the Channelized Spectrum. The Commission's conclusion that MTA-based licensing is superior to licensing based on larger service areas was well reasoned, and will promote the fundamental objectives set forth by Congress in Section 309(j). By affirming its decision, the Commission will avoid harming carriers such as WebLink that have relied on the future availability of licenses for smaller service areas. Furthermore, PCIA's demands can be accommodated by allocating a small portion of the Reserve Spectrum for nationwide licensing.

Respectfully submitted,

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Certificate of Service

I, G. Paul Smith, certify that I have this 3rd day of August, 2000, caused to be hand delivered or express next day mailed, a copy of the foregoing Opposition of WebLink Wireless, Inc. to the following:

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